

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
PETER GERRY,

Plaintiff,

-against-

**ANSWER**

07 Civ. 9545 (KMK)WP

METRO-NORTH COMMUTER RAILROAD, and  
THE WESTCHESTER ARC FOUNDATION, INC.

Defendants.

-----X

Defendant, Metro-North Commuter Railroad (“Metro-North”), by its attorney,  
Richard K. Bernard, Esq., General Counsel, as and for its answer to the complaint of the  
plaintiff, alleges as follows:

FIRST: Denies knowledge or information sufficient to form a belief as to the  
truth of the allegations contained in paragraph(s) 1 and 3 of the complaint.

SECOND: Denies upon information and belief the truth of the allegations contained  
in paragraph(s) 2 of the complaint and refers all questions of law and fact to judge and  
jury, except admits that Metro-North maintains its offices at 347 Madison Avenue, New  
York, New York.

THIRD: Denies knowledge or information sufficient to form a belief as to the  
truth of the allegations contained in paragraph(s) 4 and 5 of the complaint and refers all  
questions of law and fact to judge and jury.

**ANSWERING THE FIRST CAUSE OF ACTION**

FOURTH: Defendant repeats and realleges each and every answer made to paragraph(s) 1 through 5 of plaintiff's complaint in response to the allegations contained in paragraph 6 of the complaint as if more fully set forth herein.

FIFTH: Denies upon information and belief the truth of the allegations contained in paragraph(s) 7, 9 and 10 of the complaint and refers all questions of law and fact to judge and jury.

SIXTH: Admits the allegations contained in paragraph(s) 8 of the complaint.

SEVENTH: Denies the allegations contained in paragraph(s) 11, 12 and 13 of the complaint.

**ANSWERING THE SECOND CAUSE OF ACTION**

EIGHTH: Defendant repeats and realleges each and every answer made to paragraph(s) 1 through 13 of plaintiff's complaint in response to the allegations contained in paragraph 14 of the complaint as if more fully set forth herein.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph(s) 16, 17, 18 and 19 of the complaint.

**AS AND FOR AN AFFIRMATIVE DEFENSE**

TENTH: As and for an affirmative defense, or as a defense in mitigation of damages, the defendant claims that any injuries allegedly sustained by the plaintiff were caused, in whole or in part, by reason of the culpable conduct of the plaintiff.

**AS AND FOR A CROSS-CLAIM**

ELEVENTH: As and for a cross-claim against THE WESTCHESTER ARC FOUNDATION, INC. the defendant, METRO-NORTH, alleges that if the plaintiff(s) suffered damages as alleged in the complaint through negligence other than plaintiff's

own negligence, said damages were caused in whole or in part, by the negligent acts of omission or commission of the aforementioned defendant.

TWELFTH: That if the plaintiff(s) should recover judgment against the answering defendant on the basis of apportionment of responsibility for the alleged occurrence, the answering defendant is entitled to indemnification and/or contractual indemnification from, and judgment over against, the aforementioned defendant, THE WESTCHESTER ARC FOUNDATION, INC., for all or any part of the verdict or judgment which the plaintiff may recover.

WHEREFORE, the defendant, METRO-NORTH demands judgment dismissing the complaint, and further demands judgment over and against THE WESTCHESTER ARC FOUNDATION, INC. for the amount of any judgment obtained against the answering defendant, or on the basis of apportionment of responsibility in such amounts as a jury or Court may direct, together with costs and disbursements, and expenses of this action, including attorneys' fees.

Dated: New York, New York  
December 26, 2007

RICHARD K. BERNARD  
GENERAL COUNSEL

By: S/  
José R. Rios  
Attorneys for Defendant  
Metro-North Commuter Railroad  
347 Madison Avenue  
New York, New York 10017  
212-340-2537 - JRR/5785

TO: Ira M. Maurer, Esq.  
Cahill,Goetsch & Maurer, P.C.  
Attorneys for Plaintiff  
1 Croton Point Avenue  
Croton-on-Hudson, NY 10520  
914- 271-9474 – IM/0337

The Westchester Arc Foundation, Inc.  
121 Westmoreland Avenue  
White Plains, New York 10606

**STATE OF NEW YORK** :  
: ss:  
**COUNTY OF NEW YORK** :

LAURA MATTHEWS, being duly sworn, deposes and says:

I am not a party to the action, am over 18 years of age and reside in the Bronx, New York.

On December 26, 2007, I served a true copy of the annexed ANSWER and RULE 7.1 STATEMENT, with postage prepaid thereon, in a post-office or official depository of the U.S. Postal Service within the State of New York, addressed to the last known address of the addressee(s) as indicated below:

Ira M. Maurer, Esq.  
Cahill, Goetsch & Maurer, P.C.  
Attorneys for Plaintiff  
1 Croton Point Avenue  
Croton-on-Hudson, NY 10520  
914/ 271-9474 – IM/0337

The Westchester Arc Foundation, Inc.  
121 Westmoreland Avenue  
White Plains, New York 10606

S/  
LAURA MATTHEWS

Sworn to before me this  
26 day of December, 2007

S/  
NOTARY PUBLIC